

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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In the Matter of	)	
	)	
ZALE CORPORATION,	)	FILE NO. 962-3118
	)	
a corporation	)	AGREEMENT CONTAINING
	)	CONSENT ORDER
	)	

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The Federal Trade Commission has conducted an investigation of certain acts and practices of Zale Corporation, a corporation ("proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Zale Corporation, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Zale Corporation is a Delaware corporation with its principal office or place of business at 901 W. Walnut Hill Lane, Irving, Texas 75038-1003.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for

a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

#### ORDER

#### DEFINITIONS

For the purposes of this order, the following definitions shall apply:

1. "Clearly and prominently" shall mean as follows:
  - A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
  - B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
  - C. In a print advertisement, or on any in-store sign or display, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.
  - D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. "Natural Pearl " shall mean a calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

3. "Cultured Pearl " shall mean the composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

4. "Imitation Pearl " shall mean a manufactured product composed of any material or materials that simulate in appearance a natural pearl or cultured pearl.

5. Unless otherwise specified, "Respondent " shall mean Zale Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees.

6. "Commerce " shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of imitation pearl jewelry, in or affecting commerce, shall not represent that imitation pearls are cultured pearls.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of imitation pearl jewelry, in or affecting commerce, shall not represent that such product is or contains one or more pearls unless respondent discloses, clearly and prominently, and in close proximity to such representation, that the product is comprised of one or more imitation pearls, by describing such product as "artificial, " "imitation, " or "simulated, " or with another word or phrase of like meaning.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of cultured pearl jewelry, in or affecting commerce, shall not represent that such product is or contains one or more pearls unless respondent discloses, clearly and prominently, and in close proximity to such representation, that the product is comprised of one or more

cultured pearls, by describing such product as "cultured" or "cultivated," or with another word or phrase of like meaning.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls, shall not misrepresent the composition or origin of such product.

V.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of service of this order, respondent, directly or through any corporation, subsidiary, division, or other device, shall make available, in a place and manner calculated to attract the attention of consumers, an information sheet in the form set forth in Appendix A to this order at each store that offers for sale any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.

VI.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, for five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, business records demonstrating its compliance with the terms and provisions of this order, including but not limited to:

- A. All advertisements and promotional materials for jewelry containing one or more natural pearls, cultured pearls, or imitation pearls;
- B. All brochures, hang tags or other in-store displays relating to jewelry containing one or more natural pearls, cultured pearls, or imitation pearls; and
- C. All invoices and order forms relating to jewelry containing one or more natural pearls, cultured pearls, or imitation pearls.

VII.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall deliver a copy of this order, or a summary in the form set forth as Appendix B to this order, to all current and future principals and directors; to all current and future officers and managers with responsibilities or duties affecting compliance with the terms of this order; and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order, or a summary in the form set forth as Appendix B to this order, to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

ZALE CORPORATION

By: \_\_\_\_\_

\_\_\_\_\_

Counsel for Respondent

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MATTHEW D. GOLD  
Counsel for the Federal Trade Commission

APPROVED:

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JEFFREY KLURFELD  
Regional Director  
San Francisco Regional Office

Your Guide to

# *Pearls*

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**Natural Pearls**

A pearl formed in the wild by the random intrusion of a natural irritant into a mollusk's shell, without the intervention of man. There are few natural pearls on the general consumer jewelry market today.

**Cultured Pearls**

A cultured pearl is also grown by nature but with the assistance of man. This patented process involves the insertion of a "nucleus" into the oyster. The oyster is then carefully nurtured for the desired type of pearl. The quality of cultured pearls varies and is judged by the pearl's lustre, surface, shape, color and size.

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**Imitation Pearls**

A manufactured product composed of any material or materials that simulate in appearance a natural pearl or cultured pearl.

[To be printed on Zale Corporation letterhead]

[date]

Dear Zale employee:

This letter is to inform you that Zale Corporation recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain alleged claims for our "Ocean Treasures" line of imitation pearl jewelry. We deny the FTC's allegations, but in order to avoid protracted litigation we have entered into a settlement agreement. As part of that settlement, we are required to summarize the requirements of the settlement for our directors and officers, and for employees and others who sell our products to consumers.

The FTC alleged that Zale advertisements falsely claimed, expressly or by implication, that Ocean Treasures jewelry was composed of cultured pearls. Our settlement with the FTC contains the following requirements:

1. Zale may not represent that imitation pearls are cultured pearls.
2. Zale may not represent that imitation pearl jewelry contains pearls unless we specifically describe the jewelry as "artificial," "imitation," "simulated," or with another word or phrase of like meaning.
3. Zale may not represent that cultured pearl jewelry contains pearls unless we specifically describe the jewelry as "cultured" "cultivated," or with another word or phrase of like meaning.
4. Zale may not misrepresent the composition or origin of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.
5. Zale must make available to consumers for a period of three years, in each store that offers for sale natural pearl, cultured pearl, or imitation pearl jewelry, an information sheet that describes the difference among natural pearls, cultured pearls, and imitation pearls. This information sheet, which we are providing to each store, must be made available in a place and manner that is calculated to attract the attention of consumers.

Requirements 1-4, above, apply to all representations made in advertising, labeling, promotion, offering for sale, sale and distribution, including individual sales transactions.

Thank you for your assistance. If you have any questions about the requirements contained in this letter, please call \_\_\_\_\_

\_\_\_\_\_.

Sincerely,

[Zale Official]  
[Title]

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
ZALE CORPORATION,	)	DOCKET NO.
	)	
a corporation	)	
	)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Zale Corporation, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

1. Respondent Zale Corporation is a Delaware corporation with its principal office or place of business at 901 W. Walnut Hill Lane, Irving, Texas 75038.
2. Respondent operates the country's largest chain of retail jewelry stores with more than 1,200 locations throughout the United States, Guam, and Puerto Rico.
3. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed the "Ocean Treasures " line of imitation pearl jewelry, and numerous other lines of cultured pearl jewelry, to the public. These lines of jewelry have included bracelets, earrings, pendants, rings and strands. None of respondent 's jewelry products has included natural pearls.
4. Federal Trade Commission industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. The Federal Trade Commission 's Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. Part 23, 61 F.R. 27212 (May 30, 1996), state as follows:

A. § 23.2 Misleading Illustrations. It is unfair or deceptive to use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or

in conjunction with any accompanying words or phrases, misrepresents the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

B. § 23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations. It is unfair or deceptive to use the term "cultured pearl," "cultivated pearl," or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

C. § 23.19 Misuse of the word "pearl." (c) It is unfair or deceptive to use the word "pearl" to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

5. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

6. Respondent has disseminated or has caused to be disseminated advertisements for its Ocean Treasures imitation pearl jewelry products, including but not necessarily limited to the attached Exhibits A through B. These advertisements contain the following statements and depictions:

- A. "ZALES THE DIAMOND, SEMI-PRECIOUS AND PEARL STORE <sup>TM</sup>  
Ocean Treasures <sup>TM</sup> Fine Jewelry  
Created by nature, enhanced by man."  
[Depictions of necklace, earrings, rings, and pendants, all of which appear to contain pearls or cultured pearls](Exhibit A)
- B. "Ocean Treasures <sup>TM</sup> Fine Jewelry  
Created by nature, enhanced by man."  
[Depictions of necklace, earrings, and pendant, all of which appear to contain pearls or cultured pearls]  
(Exhibit B)



ANALYSIS OF PROPOSED CONSENT  
ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Zale Corporation, (hereinafter "Zale"). Zale is the largest retailer of fine jewelry products in the United States.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The proposed complaint alleges violations of Section 5 of the Federal Trade Commission Act. This matter focused on Zale's advertisements for the "Ocean Treasures" line of imitation pearl jewelry. The advertisements depicted Ocean Treasures earrings, necklaces, rings and pendants, and described them as follows: "Ocean Treasures Fine Jewelry. Created by nature, enhanced by man." The advertisements also included the following statement: "Zales. The Diamond, semi-precious and pearl store." The proposed complaint alleges that, through these depictions and statements, Zale violated Section 5 of the Federal Trade Commission Act by falsely claiming that the Ocean Treasures line of jewelry is composed of cultured pearls.

The Federal Trade Commission recently revised its Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. Part 23, 61 F.R. 27212 (May 30, 1996)(the "Jewelry Guides"). The previous version of the Guides as well as the revised Guides address various advertising practices in the jewelry industry, including those employed by Zale. See, e.g., § 23.2 (Misleading Illustrations); § 23.20 (Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations); § 23.19 (Misuse of the word "pearl"); and § 23.18 (Definitions of various pearls). These industry guides are administrative interpretations of laws

administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. While the Guides are referenced in the complaint, they do not create a separate cause of action.

Part I of the proposed order would require that Zale not represent that imitation pearls are cultured pearls. Part II would prevent Zale from representing that imitation pearl jewelry is or contains one or more pearls unless Zale designates the jewelry as "artificial," "imitation," "simulated," or by some other word or phrase of like meaning. Part III would prevent Zale from representing that cultured pearl jewelry is or contains one or more pearls unless Zale designates the jewelry as "cultured" or "cultivated," or by some other word or phrase of like meaning. Part IV would prohibit the company from misrepresenting the composition or origin of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.

Part V of the proposed order would require Zale, for a period of three years, to make available, at each of its stores that sells natural, cultured or imitation pearls, a brief fact sheet entitled "Your Guide to Pearls." This fact sheet briefly defines the differences among the three general categories of pearls.

The proposed order also would require Zale to maintain materials related to its advertising of pearl, cultured pearl, and imitation pearl jewelry. The proposed order would also require Zale to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.